

## **PART RULES (updated September 2021)**

**Hon. Lynn Kotler, J.S.C.**

General IAS Part 8, 80 Centre Street, Room 278

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### **I. General**

1. Virtual court appearances will be conducted via Microsoft Teams. Please be advised that all persons on the Teams meeting should always have audio and video, only one attorney may speak on behalf of each party (or jointly represented parties) and the proceedings may not be recorded absent prior court approval.
2. Invitations to the Microsoft Teams meetings for all court appearances will be sent to counsel of record on NSYCEF. Any party that needs an invitation to the meeting should contact the Part 8 Clerk via email.
3. Pursuant to Uniform Civil Rules for the Supreme Court and the County Court § 202.23(c), “each attorney who receives notification of an appearance on a specific date and time is responsible for notifying all other parties by email that the matter is scheduled to be heard on that assigned date and time.”
4. *Ex parte* communications are not permitted. Communications regarding procedural questions or issues should be directed to the part clerk. Communications regarding substantive questions and/or issues may be emailed to the court attorney provided that all sides are carbon copied.
5. Letters or emails seeking affirmative relief will not be considered and will be rejected.
6. Do not carbon copy the court on correspondence between counsel.
7. The court will not make rulings via telephone.
8. If an action is discontinued, or wholly or partially settled by stipulation, a motion has become wholly or partially moot, or a party has died or become a debtor in bankruptcy, the parties promptly shall notify the court in writing of such an event. This is a continuing obligation, and such notification shall be made in writing to the court via filing on NYSCEF or email to the Part Clerk or Chambers staff (Uniform Civil Rules for the Supreme Court and the County Court § 202.28[a]).

### **II. Conferences**

Pursuant to the Uniform Civil Rules for the Supreme Court and the County Court § 202.20-f: “[t]o the maximum extent possible, discovery disputes should be resolved through informal procedures, such as conferences, as opposed to motion practice.”

1. Parties should meet and confer and memorialize all outstanding discovery in a written stipulation signed by all sides. Upon doing so, the parties may present the stipulation to the court to be so ordered by filing on NYSCEF under the appropriate document type.
2. If the parties have a dispute that they are unable to resolve despite good faith efforts to do so (see Uniform Civil Rules for the Supreme Court and the County Court § 202.20-f [b]), they may request a virtual conference with the court via written letter filed on NYSCEF outlining the issue(s) and the parties’ positions.
3. Conferences are typically held on a Thursday.

### **III. Orders to Show Cause**

Pursuant to Uniform Civil Rules for the Supreme Court and the County Court § 202.8-d: “[m]otions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for

provisional relief), a stay is required or a statute mandates so proceeding (see Section 202.8-e). Absent advance permission of the court, reply papers shall not be submitted on orders to show cause.”

1. If a party seeks a temporary restraint in an Order to Show Cause, they **MUST** provide proof that their adversary was notified about the application and the time, date and manner that the application will be presented for signature. The court may, in its discretion, schedule a hearing on the TRO application virtually or set a deadline to submit written opposition to the TRO request.
2. All Orders to Show Cause must first be processed by the Ex Parte Motion Office. A movant should first contact that office to ensure that the Order to Show Cause has been processed and submitted to chambers before inquiring with the Part about the status of the Order to Show Cause.

#### IV. Motions

1. All Notices of Motion (but not Notices of Cross Motion) are returnable in the Motion Support Office Courtroom. Adjournments of those motions are to be addressed to Motion Support, not the Part, unless the parties are seeking to adjourn a motion submission date more than sixty days after the original return date. In that case, the stipulation will need to be so ordered, so the parties should file the stipulation on NYSCEF with a request that it be so ordered.
2. Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, the movant shall annex to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried (see Part 202.8-g). Any party opposing the motion shall submit a counterstatement of material facts.
3. Motions will be submitted without argument or rescheduled for oral argument on a case-by-case basis. Oral argument is typically held on a Tuesday.
4. Advance permission to bring any motion is not required.
5. “Courtesy” or working copies of e-filed motions are not required and should not be delivered to the part.
6. Letters should not be sent to the Court concerning a motion after said motion has been marked submitted (see Rule 14[c]).
7. Electronic copies of exhibits such as audio or video should be submitted to the court via a cloud service such as Dropbox with a link to the exhibit emailed to Eric Wursthorn, Esq., at [ewursth@nycourts.gov](mailto:ewursth@nycourts.gov), on or before the motion submission date.

#### V. Adjournments

1. A court appearance may be adjourned **on consent**, provided all parties who have appeared in the action sign a stipulation to that effect and deliver it to court via fax, email or filing on NYSCEF by 2:00 p.m. the day before the appearance is scheduled. The stipulation is still subject to court approval and it must include: 1) the reason for the adjournment, 2) the date the case was last on, and 3) the date by which the Note of Issue must be filed.
2. If there is **no consent** to a request for an adjournment of a court appearance, requests for adjournments shall be transmitted in writing to the court and to all parties via filing on NYSCEF, so as to be received no later than 48 hours before the hearing and shall set forth the efforts made to obtain the consent of all parties and the results thereof (see Uniform Civil Rules for the Supreme Court and the County Court § 202.23). Requests for adjournments not on consent made less than 48 hours before the scheduled date will not be considered, and counsel must appear on the scheduled date to make an oral application for the adjournment.

#### VI. Settlement Conferences and ADR

1. If the parties have conferred and seek a settlement conference or are amenable to submitting their case to mediation, they should email Eric Wursthorn, Esq., with the following information: [1] nature of case; [2] substantive issues in dispute; [3] any offers and demands; [4] if a personal injury action, nature/extent of personal injuries sustained. The court may conduct a settlement conference or refer

the matter to mediation in its discretion and subject to the mediation part's approval only upon a showing that a settlement conference or mediation would be fruitful in the case.

#### **VII. Note of Issue**

1. The note of issue may be filed, and a future compliance conference dispensed with, provided all parties who have appeared in the action stipulate in writing that all discovery has been completed. This stipulation must be sent to the court via fax, email or filing on NYSCEF by 2:00 p.m. the day before the appearance is scheduled.

#### **VIII. Trials**

1. Trials are scheduled to proceed day-by-day until completed.
2. Once a trial is assigned to Part 8, counsel are required to serve and submit the following:
  - a. marked pleadings;
  - b. the bill of particulars;
  - c. a witness list;
  - d. expert disclosures;
  - e. pretrial memoranda (if applicable);
  - f. proposed jury instructions (if applicable);
  - g. proposed jury verdict sheet (if applicable); and
  - h. a one paragraph summary of the parties' contentions.
3. Parties must have copies of exhibits for the court and for each adversary.
4. All parties are encouraged to have their exhibits pre-marked by the court reporter.